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15 IN THE UNITED STATES DISTRICT COURT  
16  
17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 CASE NO. 1:20-CR-00026 NONE-SKO

20 Plaintiff,

21 MOTION TO EXCLUDE TIME UNDER SPEEDY  
22 TRIAL ACT; [PROPOSED] FINDINGS AND  
23 ORDER

24 v.

25 JOSHUA S. LEONARD,

26 Defendant.

27 I. **INTRODUCTION**

28 On March 19, 2020, the Court by Minute Order vacated the existing trial confirmation and trial  
dates in this matter and continued them for a trial setting conference in early May and excluding time  
under the Speedy Trial Act. Doc. 18 (the “Minute Order”). Following the Court’s Minute Order, the  
United States attempted to enter into a stipulation with the defendant confirming that both parties  
supported the Court’s continuance and Speedy Trial Act exclusion. On March 26, 2020, defense  
counsel indicated that defendant refused to stipulate to either the continuance or Speedy Trial Act  
exclusion. Accordingly, the United States now presents further authority supporting the continuance  
and exclusion and requests the Court make further Findings and specific Order in this Case.

29 II. **BACKGROUND**

30 At the defendant’s arraignment in mid-February 2020, the defendant requested a speedy trial and

1 declined to waive time under the Speedy Trial Act; the case was accordingly set for trial confirmation  
2 hearing on March 27, 2020 and jury trial on April 14, 2020. Doc. 7. Since that time, the Court has  
3 issued several General Orders related to the COVID-19 pandemic, including General Orders 611 and  
4 612. In particular, on March 17, 2020, the Court entered General Order 611, suspending all jury trials in  
5 the Eastern District of California scheduled to commence before May 1, 2020, as part of an effort to  
6 address public health concerns related to COVID-19. On March 18, 2020, General Order 612 issued.  
7 That Order closed each of the courthouses in the Eastern District of California to the public. It further  
8 authorized assigned district court judges to continue criminal matters after May 1, 2020 and excluding  
9 time under the Speedy Trial Act; General Order 612 incorporated General Order 611's findings  
10 regarding the health dangers posed by the pandemic, and added additional findings to support the  
11 exclusion in the judge's discretion.

12 The State has also continued to take action to combat the COVID-19 pandemic. As of March 19,  
13 2020, the Governor for the State of California entered a state-wide shelter-in-place order, requiring  
14 everyone in the State to stay in their homes except for essential outings, such as to obtain food,  
15 prescriptions or healthcare services. [https://www.cnn.com/2020/03/19/us/california-coronavirus-stay-](https://www.cnn.com/2020/03/19/us/california-coronavirus-stay-home-order/index.html)  
16 [home-order/index.html](https://www.cnn.com/2020/03/19/us/california-coronavirus-stay-home-order/index.html).

17 On March 19, 2020, the Court issued the Minute Order. Relying on the General Orders, it  
18 continued the matter until a trial setting conference on May 8, 2020 at 8:30 a.m. Doc. 18. The Minute  
19 Order excluded time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7) from the date of the Minute  
20 Order to May 8, 2020, finding “that the ends of justice served by taking such action outweigh the best  
21 interest of the public and the defendant in a speedy trial in light of the public health emergency posed by  
22 the coronavirus (COVID-19) outbreak and the circumstances more fully explained in this court’s  
23 General Orders 611 and 612.”

### III. ARGUMENT

26 The Speedy Trial Act generally requires that a defendant be brought to trial within seventy days  
27 of first appearance, 18 U.S.C. § 3161(c)(1), but time can be excluded from that period for several  
28 reasons, including when the ends of justice require it. Ends-of-justice continuances are excludable

1 where “the judge granted such continuance on the basis of his findings that the ends of justice served by  
2 taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.  
3 § 3161(h)(7)(A). No such period is excludable unless “the court sets forth, in the record of the case,  
4 either orally or in writing, its reason or finding that the ends of justice served by the granting of such  
5 continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.* The Act  
6 contains a number of non-exclusive factors that should be considered before a court authorizes an ends-  
7 of-justice continuance. *Id.* at 3161(h)(7)(B). Accordingly, the Act allows ends-of-justice exclusion, but  
8 only after a court considers and makes findings that support the exclusion.

9       Although General Order 611 addresses the district-wide health concern, the Supreme Court has  
10 emphasized that the Speedy Trial Act’s ends-of-justice provision “counteract[s] substantive  
11 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case  
12 following a court’s consideration of the factors set forth in the statute. *Zedner v. United States*, 547 U.S.  
13 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A).  
14 *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.* at 509 (construing ends-of-justice  
15 continuance granted under former section (h)(8)(A) and concluding that failure to make findings  
16 constituted reversible error); *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir.  
17 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings  
18 on the record “either orally or in writing”). Based on the plain text of the Speedy Trial Act—which  
19 *Zedner* emphasizes as mandatory—the Government seeks to ensure that the Minute Order’s finding is  
20 fully supported by individualized findings and written Order.

21       General Order 611 excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
22 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
23 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
24 circumstances. For example, the Ninth Circuit affirmed a district court’s two-week ends-of-justice  
25 exclusion following Mt. St. Helens’ eruption, where the district court found that the state of emergency  
26 made it impossible to proceed. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). As the Ninth  
27 Circuit noted, the ends –of-justice continuance can be proper where the record makes clear that there  
28 would be “appreciable difficulty” to proceeding to trial during an emergency. *Id.* Various other states

1 of emergency that disrupt court operations and the ability to assemble court staff, jurors, witnesses and  
2 other personnel required for trial may also serve as bases for ends-of-justice continuances. *See United*  
3 *States v. Scott*, 245 Fed. App'x 391, 394 (5th Cir. 2007) (upholding ends-of-justice continuance during  
4 Hurricane Katrina). Accord; *United States v. Richman*, 600 F.2d 286, 292, 293-94 (1st Cir. 1979)  
5 (approving continuance granted following “a paralyzing blizzard.”); *United States v. Correa*, 182 F.  
6 Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001  
7 terrorist attacks and the resultant public emergency). As General Orders 611 and 612 note (and as  
8 confirmed by continuing developments since their issuance) COVID-19 presents just such an  
9 emergency.

10 Indeed, even continuances granted when single attorneys, agents, and witnesses become  
11 unavailable comport with the Act. *See, e.g., United States v. Stallings*, 701 F. App'x 164, 170-71 (3d  
12 Cir. 2017) (prosecutor had “family emergency” requiring “out-of-state travel with no certain return  
13 date”); *United States v. Hale*, 685 F.3d 522, 533-36 (5th Cir. 2012) (primary case agent had “immediate  
14 and catastrophic family medical emergency”); *Richman*, 600 F.2d at 292, 294 (informant hospitalized).  
15 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated  
16 by the statutory rules.

17 This Court generally has “[b]road discretion” to grant continuances. *Morris v. Slappy*, 461 U.S.  
18 1, 11 (1983). Here, in addition to the public health concerns cited by General Order 611 and presented  
19 by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because the  
20 trial involves participants and witnesses with high-risk factors, such as age, medical conditions, etc. The  
21 victim in this case also would have to travel by plane to attend the trial from South Carolina.  
22 Additionally, counsel and other relevant individuals have been mandated to telework and minimize  
23 personal contact to the greatest extent possible and everyone in California is now ordered to adhere to  
24 strict shelter-in-place protocols. It will be difficult to avoid personal contact should the trial proceed.

25 Based on the above-stated findings, the ends of justice served by continuing the case as requested  
26 outweigh the interest of the public and the defendant in a trial within the original date prescribed by the  
27 Speedy Trial Act.

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IV. **CONCLUSION**

2 For the foregoing reasons, the United States moves the Court issue written findings and an Order  
3 affirming the continuance to May 8, 2020 and excluding time under the ends-of-justice provisions of the  
4 Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A). Specifically, the United States requests that the Court find  
5 that the ends of justice (in light of the global pandemic and its effects on the court system and witness  
6 safety and travel) served by taking such action outweigh the best interest of the public and the defendant  
7 in a speedy trial.

8  
9 Dated: March 30, 2020

Respectfully submitted,

10 MC GREGOR W. SCOTT  
United States Attorney

11  
12 /s/ MICHAEL G. TIERNEY

13 MICHAEL G. TIERNEY  
Assistant United States Attorney

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## **FINDINGS AND ORDER**

The Court has read and considered the government's Motion to Exclude Time Under Speedy Trial Act. The Court hereby finds that the Motion, plus the outbreak of the novel coronavirus known as COVID-19 (and related General Orders of this Court and guidance from the Centers for Disease Control and Prevention and state and local health officials), collectively demonstrate facts that provide good cause for a finding of excludable time pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A).

7 The Court further finds that: (i) the ends of justice served by the continuance outweigh the best  
8 interest of the public and defendant in a speedy trial; and (ii) failure to grant the continuance would  
9 result in a miscarriage of justice, given the emergence of the novel coronavirus in the Eastern District of  
10 California and beyond, and the necessary steps being taken to avoid further transmission of the virus.  
11 Time is excluded under the Speedy Trial Act between March 27, 2020 and May 8, 2020.<sup>1</sup>

IT IS SO ORDERED.

Dated: **March 31, 2020**

Dale A. Droyd  
UNITED STATES DISTRICT JUDGE

<sup>1</sup> In issuing this order the court in no way is suggesting that its Minute Order issued in this case on March 19, 2020 (Doc. No. 19) excluding time was in any way inadequate under either Supreme Court or Ninth Circuit authority. Indeed, in the undersigned's view, in excluding time under the Speedy Trial Act the court's March 19, 2020 order made written on-the-record findings in this particular case following the court's consideration of the factors set forth in the statute, in keeping with the decisions in *Zedner v. United States*, 547 U.S. 489, 509 (2006) and *United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000). Nonetheless, and only out of an over-abundance of caution is the court issuing this order.